No. 89-1274

Supreme Court, U.S.
FILED
MAR 28 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

ROBERT A. ALBERT, RICHARD W. PALIZAY, and SAMUEL R. SCHAFFER, on behalf of themselves and all other similarly situated,

Petitioners,

—v.—

AVERY, INC., a Delaware Corporation; NELSON PELTZ and PETER MAY, as Officers and Directors; UNIROYAL CHEMICAL HOLDING CO., a Delaware Corporation; UNIROYAL CHEMICAL ACQUISITION CO., a New Jersey Corporation; UNIROYAL CHEMICAL CO., INC., a New Jersey Corporation; UCC INVESTORS HOLDING, INC., a Delaware Corporation; ROBERT J. MAZAIKA, as Officer and Director; and DREXEL BURNHAM LAMBERT INCORPORATED,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' JOINT BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a state law action brought by participants in employee pension and welfare benefit plans regulated by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1461 ("ERISA"), challenging a proposed leveraged buyout of their employer on the ground that it might jeopardize the employer's ability to make contributions to those plans in the future, and seeking an order "clarifying and enforcing their rights" and compelling pre-funding of the plans, is removable under this Court's decisions in *Metropolitan Life Insurance Co.* v. *Taylor*, 481 U.S. 58 (1987) and *Pilot Life Insurance Co.* v. *Dedeaux*, 481 U.S. 41 (1987).

PARTIES TO THE PROCEEDING

The parties to the proceeding are as listed in the caption.*

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* Pursuant to Supreme Court Rule 29.1, respondents advise the Court that Avery, Inc. has no parent companies or subsidiaries other than wholly-owned subsidiaries; that UCC Investors Holding, Inc. has no parent companies and no subsidiaries other than wholly-owned subsidiaries; that Uniroyal Chemical Holding Co. and Uniroyal Chemical Acquisition Co. have no parent companies other than other respondents herein and have no subsidiaries other than wholly-owned subsidiaries; that Uniroyal Chemical Co., Inc. has no parent companies other than other respondents herein and wholly-owned subsidiaries thereof and no subsidiaries other than Premier Chemical Company, Ltd., Monochem Inc., Rubicon Inc., Industrias Gustafson S.A. de C.V., Unimaua Industria Quimicas S.A., PASA, Petroquimica Argentina, Sociedad Anonima Industrial, Comercial, Financiera y de Mandatos, Orchem (Pty.) Limited, Novaquim, S.A. de C.V., Intrachem AG, Herdillia Unimers Limited, Unikor Chemical Inc. and wholly-owned subsidiaries; and that Drexel Burnham Lambert Incorporated is a wholly-owned subsidiary of Drexel Burnham Lambert Group, Inc. and that it has no subsidiaries other than wholly-owned subsidiaries.

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OPINIONS BELOW

Albert v. *Avery, Inc.*, Docket No. 89-7970 (2d Cir. Nov. 14, 1989) (unreported summary order)[1]; *Albert* v. *Avery, Inc.*, 724 F. Supp. 245 (S.D.N.Y. 1989).

JURISDICTION

Original jurisdiction in the district court was conferred by 28 U.S.C. § 1331 (1982). Petitioners purport to base jurisdiction in this Court on 28 U.S.C. §§ 1254(1) (1982), as amended, and 2106 (1982).

STATUTES INVOLVED

28 U.S.C. § 1331 (1982):

Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1441 (1982 & Supp. V 1987), as amended:

Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under

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1 A copy of the Second Circuit's decision which the Petition seeks to have reviewed is included in the appendix hereto. The version of that decision contained in the appendix to the Petition misquotes the decision. *See* note 14 and accompanying text, *infra* at 9.

this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, as amended, § 514(a), 29 U.S.C. § 1144(a) (1982):

Supersedure; effective date

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, as amended, § 502(a), 29 U.S.C. § 1132(a) (1982):

Persons empowered to bring a civil action

A civil action may be brought—

(1) by a participant or beneficiary—(A) for the relief provided for in subsection (c) of this section, or (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any action or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 1025(c) of this title;

(5) except as otherwise provided in subsection (b) of this section, by the Secretary (A) to enjoin any act or practice which violates any provision of this subchapter, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this subchapter; or

(6) by the Secretary to collect any civil penalty under subsection (i) of this section.

STATEMENT OF THE CASE

Nature of the Complaint

Petitioners, who purport to represent a class of active and retired employees of respondent Uniroyal Chemical Company, Inc. ("Uniroyal Chemical"), are participants in life and health insurance plans and pension plans maintained by that company pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001-1461 (1982 & Supp. V 1987) ("ERISA"). Below, petitioners unsuccessfully sought to enjoin a leveraged buyout of an intermediate parent of Uniroyal Chemical by respondent UCC Investors Holding Co., Inc. ("UCC Investors"), an entity formed by a group led by management of Uniroyal Chemi-

cal,[2] on the ground that the transaction would so increase Uniroyal Chemical's debt burden as to jeopardize its ability to make contributions to petitioners' pension, life and health insurance plans at some unspecified future time. The acquisition was consummated on October 30, 1989.

Petitioners commenced this action in New York state court on September 11, 1989 by service of a complaint purporting to assert five causes of action under state law: fraudulent conveyance, corporate fraudulent transfer, breach of fiduciary duty, corporate waste, and unjust enrichment. Petitioners sought by this action to compel their employer to pre-fund their pension and welfare plans, in a manner inconsistent with both the requirements of ERISA and the terms and conditions of the plans. Thus, petitioners sought as relief "an order clarifying and enforcing their rights . . . and enjoining the sale of UCHC, UCAC or Uniroyal Chemical to UCC Investors" and related transactions "unless and until such time as a fund is set aside to provide for all unfunded retirement obligations owed to the Class." (Complaint at 15 (PA 83-84).[3])

Removal to Federal Court

On September 14, 1989, respondents removed the case to the United States District Court for the Southern District of

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2 In the acquisition UCC Investors acquired from respondent Avery, Inc. ("Avery") all of the outstanding stock of respondent Uniroyal Chemical Holding Corporation ("UCHC"), which owns all of the stock of respondent Uniroyal Chemical Acquisition Corporation ("UCAC"), which in turn indirectly owns all of the stock of Uniroyal Chemical. Respondent Robert J. Mazaika is President of Uniroyal Chemical and of UCC Investors. Respondent Drexel Burnham Lambert Incorporated is a minority stockholder in UCC Investors. Respondents Nelson Peltz and Peter May together are the majority shareholders in Avery.

3 References to the appendix to the Petition are made herein by the designation "PA." References to the appendix to this brief are made herein by the designation "RA."

New York pursuant to 28 U.S.C. § 1441, which authorizes removal of actions of which the district courts have original jurisdiction. Petitioners moved the district court to remand the action to state court.

The Decision of the District Court

On September 18, 1989, the district court denied petitioners' motion to remand, finding the action properly removed under this Court's decisions in *Metropolitan Life Insurance Co.* v. *Taylor*, 481 U.S. 58 (1987) (hereinafter "*Metropolitan Life* v. *Taylor*") and *Pilot Life Insurance Co.* v. *Dedeaux*, 481 U.S. 41 (1987) (hereinafter "*Pilot Life* v. *Dedeaux*"). Those decisions held that state law actions that are preempted under § 514(a) of ERISA,[4] and that also fall within the scope of the civil enforcement provisions of § 502(a) of ERISA,[5] are removable as arising under ERISA, even if the pleadings purport to raise only state law claims. *Albert* v. *Avery, Inc.*, 724 F. Supp. 245, 254 (S.D.N.Y. 1989) (hereinafter "*Albert* v. *Avery* (S.D.N.Y.)"), *aff'd*, No. 89-7970 (2d Cir. Nov. 14, 1989) (summary order) (PA 14-15).[6] Petitioners moved for reconsideration of this remand ruling; on October 10, 1989, the district court reaffirmed its denial of petitioners' remand motion. *Id.* at 247 (PA 24).[7] On that date the district court also granted respondents' motion to dismiss the action pursuant to Rule 12(b)(6), Fed. R. Civ. P., for failure to state a claim upon which relief could be granted. Having found that petitioners' state law causes of action were preempted by ERISA, the district court treated the complaint as though it had pleaded causes of action under § 502(a) of

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4 29 U.S.C. § 1144(a) (1982).

5 29 U.S.C. § 1132(a) (1982).

6 The text of the district court's September 18, 1989 decision is set forth at PA 1-15.

7 The text of the district court's October 10, 1989 decision is set forth at PA 16-43.

ERISA. Reviewing the complaint on that basis, the district court still found that the complaint failed to state a claim, but gave petitioners the opportunity to file an amended complaint. *Id.* at 247-50 (PA 25-38).[8] (Petitioners did not file an amended complaint.) The district court also denied petitioners' motion for an order preliminarily enjoining the acquisition, after evaluating the merits of petitioners' claims. *Id.* at 250-51 (PA 38-42).[9]

Petitioners appealed the district court decision to the Court of Appeals for the Second Circuit only insofar as it denied their motion to remand the case to state court. Petitioners did not appeal the dismissal of their action or the denial of their motion for a preliminary injunction.

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8 The district court held that the complaint as so construed failed to state claims for which relief could be granted under ERISA because, *inter alia*, it was not alleged that the immediate, foreseeable and inevitable consequence of the proposed acquisition would be a violation of ERISA or of the plans. 724 F. Supp. at 248-50 (PA 26-35). (Indeed, the district court found that the evidence submitted was to the contrary. *Id.* at 249-51 (PA 31-41).) Specifically, the district court found that petitioners could not show that the acquisition would violate the welfare plans or applicable ERISA provisions, since welfare plans are exempt from vesting and minimum funding requirements and the plan documents reserved to Uniroyal Chemical the right to amend or terminate the plans at any time. *Id.* at 249 (PA 31-32). The district court also found that petitioners could not show that an immediate and foreseeable consequence of the proposed leveraged buyout would be the inability of Uniroyal Chemical to make future contributions to the pension plans when required by ERISA and the pension plans. *Id.* at 248-50 (PA 32-35).

9 The district court reached the merits of petitioners' motion for a preliminary injunction, and denied that motion on the grounds that petitioners failed to show likelihood of success on the merits or a favorable balance of hardships or irreparable harm. 724 F. Supp. at 250-51 (PA 38-42). The district court also noted that the detailed affidavits submitted by the parties demonstrated that *even under state fraudulent conveyance law* "a preliminary injunction would be inappropriate, given the vagueness of [petitioners'] claim, the remoteness and speculative nature of the potential injury to [petitioners], and the immediacy and magnitude of the injury to [respondents] were [the court] to enjoin the transaction . . . ." *Id.* at 251 (PA 42).

The Decision of the Court of Appeals

On November 14, 1989, the Second Circuit, by summary order which it directed not to be published or cited or relied on in any unrelated case,[10] affirmed the district court's denial of the remand motion, holding that petitioners' complaint fell squarely within the class of cases this Court held removable in *Metropolitan Life* v. *Taylor*. The Second Circuit found the two-pronged test for complete ERISA pre-emption, as stated in *Taylor*, satisfied: The court had "no difficulty in holding that [petitioners'] state law claims 'relate to' an ERISA employee benefit plan and thereby are pre-empted by ERISA," since they sought "to impose various state law duties upon corporate officials and those attempting to acquire corporations when their activities might affect benefits owed to ERISA beneficiaries." *Albert* v. *Avery*, No. 89-7970 (2d Cir. Nov. 14, 1989) (summary order), slip op. (hereinafter "*Albert* v. *Avery* (2d Cir.)") at 4-5 (RA 4). The Second Circuit held that petitioners' claims were within the scope of the civil enforcement provisions of § 502(a), and therefore subsumed by ERISA, in part because the "backbone of the claim" of these ERISA plan participants was an injunction to compel funding of those ERISA benefit plans. *Id.* at 5-6 (RA 4). Therefore, the Second Circuit held that removal was proper under *Metropolitan Life* v. *Taylor*. *Id.* at 6 (RA 5).[11]

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10 Pursuant to § 0.23 of the Rules of the United States Court of Appeals for the Second Circuit, that court may by summary order dispose of appeals in which the "decision is unanimous and each judge of the panel believes that no jurisprudential purpose would be served by a written opinion. . . ." Rules of the U.S. Court of Appeals for the Second Circuit, § 0.23. The Second Circuit rules provide that since summary orders "do not constitute formal opinions of the court and are unreported and not uniformly available to all parties, they shall not be cited or otherwise used in unrelated cases before this or any other court." *Id.*

11 The Second Circuit expedited the appeal below, without full briefing of the issue presented on that appeal. Rather, the Second Circuit decided the appeal on the basis of briefs submitted by the parties on

Response to Petitioners' Statement of the Case

The Petition's Statement of the Case contains numerous misstatements of fact.[12] Petitioners' assertions that "no claim in this case relates to, falls under or is governed by ERISA or any other federal law" (Petition at 11), that "[n]o benefit plan is a party or affected by the action" (*id.* at 12), and that "the Complaint has nothing to do with what benefits are owed by an ERISA-governed plan . . ." (*id.* at 21) or "what the level of contributions to a plan should be . . ." (*id.* at 22), are simply not true.[13] As both courts below found, these disclaimers are belied by the nature and goals of petitioners' claim and their prayer for relief, which sought an injunction "unless and until such time as a fund is set aside to provide for all unfunded retirement obligations owed to the Class." (Complaint at 15 (PA 84).[14])

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petitioners' motion for expedited treatment and summary disposition of their appeal, and oral argument of counsel. Nevertheless, the Second Circuit had "no difficulty" in reaching its holding. *Albert* v. *Avery* (2d Cir.), slip op. at 5 (RA 4).

12 Many of those misstatements have no bearing on the issue of the propriety of removal and therefore will not be addressed here, except to note that the Petition seriously mischaracterizes certain terms of the transaction, its economic *bona fides*, its likely economic effects and the motivation of various parties to it. (*See* Petition at 5-9.) Petitioners offered these same mischaracterizations of the transaction to the district court, which rejected them. *See* 724 F. Supp. at 253-54 (PA 13-15).

13 The Petition also mischaracterizes the role played by the Pension Benefit Guaranty Corporation ("PBGC") in the proceedings before the district court. The Petition implies that the PBGC supported petitioners' motion to remand and that the district court declined to follow that agency's advice. *See* Petition at 23-24. In fact, the PBGC, at petitioners' request, asked the district court for, and accordingly was given, the opportunity to submit its views on the matter, but then took no position–and did *not* request remand. *See Albert* v. *Avery* (S.D.N.Y.), 724 F. Supp. at 247 (PA 23).

14 The Petition also misquotes the decision of the Second Circuit below in this case, in at least one major respect, by deleting an entire clause. The recreation of the Second Circuit's decision contained in the

SUMMARY OF ARGUMENT

The writ of certiorari should be denied. This case presents no unresolved question of law, or any special or important reason for further review. It is controlled by this Court's decision in *Metropolitan Life* v. *Taylor*. The Second Circuit correctly applied the holding of *Metropolitan Life* v. *Taylor* to the facts of this case.

There is no conflict between the Second Circuit's decision and this Court's recent decision in *Mackey* v. *Lanier Collections Agency & Service, Inc.*, 486 U.S. 825 (1988). Nor is there any conflict among lower courts on the question presented in this case. The cases petitioners assert to be in conflict on the question presented in this case all concern either (1) suits that did not involve determination of participant's rights or employer's obligations under ERISA benefit plans, (2) suits by plaintiffs who have no civil enforcement remedies under § 502(a), or (3) suits arising under statutes other than ERISA. Accordingly each such case is inapposite here and is outside the scope of this Court's holding in *Metropolitan Life* v. *Taylor*.

Finally, the posture in which review is sought—an expedited effort to enjoin a transaction now fully consummated in which petitioners have chosen not even to appeal the ERISA ruling on the merits—underscores the inappropriateness of review.

Appendix to the Petition quotes the decision as stating: "Thus, ERISA will also preempt both state statutes of general application which 'bear[ ] indirectly but substantially' upon ERISA benefit plans, *See Pilot Life*, 481 U.S. at 48." (PA 52-53.) The actual decision states: "Thus, ERISA will also pre-empt both state statutes of general application which 'bear[ ] indirectly but substantially' upon ERISA benefit plans, *see Metropolitan Life Ins. Co.* v. *Massachusetts, 471 U.S. 724, 739 (1985), as well as generally applicable state common law actions with the same type of effect upon ERISA benefit plans. See Pilot Life*, 481 U.S. at 48." *Albert* v. *Avery* (2d Cir.), slip op. at 4 (RA 3-4) (emphasis added to show language omitted from the recreation contained in the Appendix to the Petition).

A true and correct copy of the Second Circuit's decision is set forth in the appendix hereto.

There is no reason why this Court should review the decision of the Second Circuit in this case.

REASONS FOR DENYING THE WRIT

A. There Is No Special Or Important Question In This Case That Has Not Previously Been Settled By This Court

This Court already has spoken on the question presented in this case; the Second Circuit below merely applied the law as settled by the decisions of this Court. There is no open question raised by this case for this Court to decide.

This Court has interpreted the purposes of ERISA, the language of its statutory provisions and their legislative history as constituting "explicit direction from Congress" that state law causes of action, such as the ones asserted here, that "relate to any employee benefit plans"[15] are pre-empted and those that fall "within the scope of the civil enforcement provisions of § 502(a)" of ERISA,[16] are removable to federal court. *Metropolitan Life* v. *Taylor*, 481 U.S. at 66; *see also Pilot* v. *Dedeaux*. This does not mean that ERISA plan participants, such as petitioners, are deprived of remedies with respect to corporate transactions that actually threaten their benefits under ERISA benefit plans. It means only that Congress has determined that, in order to promote the goal of ERISA of "protect[ing] . . . the interests of participants in employee benefit plans . . . by . . . providing for appropriate remedies, sanctions, and ready access to the Federal courts,"[17] and "by eliminating the threat of conflicting and inconsistent state and local regulation,"[18] it is necessary that such relief be obtained only through the civil enforcement

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15 ERISA § 514(a), 29 U.S.C. § 1144(a) (1982).

16 29 U.S.C. § 1132(a) (1982).

17 ERISA § 2(b), 29 U.S.C. § 1001(b) (1982).

18 120 Cong. Rec. 29197 (1974) (remarks of Rep. Dent, one of the House sponsors of ERISA).

provisions provided for in ERISA. As the Second Circuit stressed in this case,

> "our ruling above that [petitioners'] claim for relief is pre-empted by ERISA does not mean that ERISA necessarily forecloses relief the [petitioners] might seek. Instead we hold only that to the extent that [petitioners] may have a claim for relief in this action, such relief would come under ERISA and not under the five state law grounds advanced by [petitioners] in [their] initial complaint." *Albert* v. *Avery, Inc.* (2d Cir.), slip op. at 6 (RA at 5).

Petitioners assert that this Court should decline to apply the rule of *Metropolitan Life* v. *Taylor* to their attempt to utilize state fraudulent conveyance law to enjoin a leveraged buyout on the ground that it might interfere with or jeopardize their receipt of benefits under those plans.[19] As the prior decisions of this Court demonstrate, petitioners' position is contrary to the intent of Congress, as evidenced in the language, purpose and legislative history of ERISA. *Metropolitan Life* v. *Taylor*; *Pilot Life* v. *Dedeaux*. If adopted, petitioners' position would upset the delicate balance Congress reached in ERISA designed to protect employees while

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19 Curiously in this regard petitioners cite to *In re International Harvester Consolidated Litigation*, 681 F. Supp. 512 (N.D. Ill. 1988) (*see* Petition at 24), a district court case that said in dicta that ERISA would not pre-empt an attempt *by the PBGC* to use state fraudulent conveyance law to recover assets in an appropriate case. The Petition quotes that decision entirely out of context. The language quoted in the Petition with respect to that case concerns liability of a predecessor company to the PBGC under ERISA—it has nothing whatsoever to do with pre-emption. In any event, that the use of state law remedies in an appropriate case by the PBGC, which derives its enforcement authority from Title IV of ERISA, not from § 502(a), may not be pre-empted, is completely irrelevant to the question of whether use of state law claims by ERISA-plan participants is pre-empted. As this Court has held, by congressional design plan participants are limited to the civil enforcement provisions of § 502(a) when the nature of their claims is such that they will impact on rights and obligations under ERISA benefit plans. *Pilot Life* v. *Dedeaux*.

at the same time encouraging employers to adopt employee benefit plans. *See Pilot Life* v. *Dedeaux*, 481 U.S. at 54.[20]

This Court has already spoken on the question presented here, in *Metropolitan Life* v. *Taylor*—which was correctly applied by the Second Circuit and the district court here. No important unresolved question is presented for review.

B. The Decision Of The Second Circuit Is Consistent With And Correctly Applied The Applicable Decisions Of This Court

In *Pilot Life* v. *Dedeaux*, the Court elaborated on and clarified the scope of ERISA pre-emption and § 502(a), thereby laying the foundation for its decision in *Metropolitan Life* v. *Taylor*. In *Pilot Life* v. *Dedeaux*, the Court held that common law tort and contract causes of action asserted in a diversity suit by an ERISA plan participant against the plan insurer for alleged improper processing of claims and wrongful termination of benefits under a welfare plan were pre-empted by ERISA.[21] Noting that " '[t]he question whether a certain state action is pre-empted by federal law is one of congressional intent,' " 481 U.S. at 45, the Court examined the legislative history of § 514(a) and concluded that, as it observed in the past, "the express pre-emption provisions of ERISA are deliberately expansive, and designed to 'establish pension plan regulation as exclusively a federal concern.' "

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20 So plain is the inability of petitioners to prevail if the comprehensive ERISA system is applied that they never even sought to appeal the denial of their motion for a preliminary injunction or the dismissal of their claims. This tactical decision demonstrates that petitioners' lawsuit is necessarily premised on an approach which would ignore the carefully structured compromises struck by Congress in enacting the comprehensive ERISA system.

21 Part of the decision in *Pilot Life* v. *Dedeaux* concerned the circumstances under which state law claims relating to employee benefit plans that would have been pre-empted by § 514(a) of ERISA, 29 U.S.C. § 1144(a), are exempted from pre-emption by § 514(b), 29 U.S.C. § 1144(b) (1982 & Supp. V 1987), which contains the so-called "savings clause." The scope of § 514(b) is not at issue in this case. *See* note 35, *infra* at 23.

Id. at 45-46 (quoting *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981)).[22]

The Court went on to say that Congress intended that the civil enforcement provisions of § 502(a) be the exclusive vehicle for vindicating ERISA rights in suits brought by plan participants or beneficiaries:

> "The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected in ERISA.
>
> 'The six carefully integrated civil enforcement provisions found in Section 502(a) of the statute as finally enacted . . . provide strong evidence that Congress did *not* intend to authorize other remedies that it simply forgot to incorporate expressly.'
>
> "The deliberate care with which ERISA's civil enforcement remedies were drafted and the balancing of policies embodied in its choice of remedies argue strongly for the conclusion that ERISA's civil enforcement remedies were intended to be exclusive. This conclusion is fully confirmed by the legislative history of the civil enforcement provision." *Id.* at 54 (citation omitted).

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22 In *Pilot Life* v. *Dedeaux*, the Court emphasized "the expansive sweep of the pre-emption clause":

> "In both *Metropolitan Life* [*Insurance Co.* v. *Massachusetts*, 471 U.S. 724, 739 (1985)], and *Shaw* v. *Delta Airlines, Inc.*, [463 U.S. 85, 96-100 (1983)], we noted the expansive sweep of the pre-emption clause. In both cases '[t]he phrase "relate to" was given its broad common-sense meaning, such that a state law "relate[s] to" a benefit plan "in the normal sense of the phrase, if it has a connection with or reference to such a plan." ' *Metropolitan Life* [*Insurance Co.* v. *Massachusetts*], 471 U.S. at 739, quoting *Shaw* v. *Delta Airlines*, 463 U.S. at 97. In particular we have emphasized that the pre-emption clause is not limited to 'state laws specifically designed to affect employee benefit plans.' *Shaw* v. *Delta Airlines*, 463 U.S. at 98." 481 U.S. at 47-48.

In *Metropolitan Life* v. *Taylor*, the Court, answering the question specifically reserved in *Franchise Tax Board* v. *Construction Laborers Vacation Trust*, 463 U.S. 1 (1983), held that the complete pre-emption rule—under which any suit coming within the scope of a cause of action created by a federal statute is displaced by and arises under that statute, and therefore is removable even if the federal claim does not appear on the face of the well-pleaded complaint—applies to ERISA. The Court found that the pre-emptive force of ERISA is so "extraordinary" that it "converts an ordinary state common law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule." 481 U.S. at 65. Accordingly, the Court held that state law actions that relate to employee benefit plans, and therefore are pre-empted by ERISA § 514(a), and that are displaced by the civil enforcement provisions of ERISA § 502(a), arise under the laws of the United States and therefore are removable, even if neither ERISA claims nor ERISA pre-emption appear on the face of the complaint.

In this case, the courts below correctly applied this Court's decision in *Metropolitan Life* v. *Taylor* to hold that the complaint here was properly removed. Petitioners are ERISA plan participants, challenging an acquisition of their employer's parent on the ground that the transaction would jeopardize their employer's ability to make contributions to, and, consequently, petitioners' rights to receive benefits from, the plans. They sought here to use state fraudulent conveyance remedies to obtain an order clarifying and enforcing their rights to benefits under the plans, Complaint at 5, 15 (PA 66, 83-84) and enjoining the leveraged buyout of their employer unless it agreed to pre-fund their pension plan in a manner inconsistent with ERISA's minimum funding requirements.[23]

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23 *Cf.* ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) (1982). Congress provided in ERISA that pension plans must meet certain minimum funding criteria, but pension plans need not be fully funded at any time prior to termination. ERISA §§ 301-308, 29 U.S.C. §§ 1081-1088 (1982 & Supp. V 1987), as amended. There was never any allegation that the pension fund was terminated or about to be terminated.

Petitioners also sought to compel their employer to pre-fund their welfare plan, despite the fact that Congress exempted all welfare plans from funding and vesting requirements and that these welfare plans gave the company the right to terminate them or reduce benefits at any time,[24] *see* Complaint at 5, 15 (PA 66, 83-84).[25] Thus, by asking for pre-funding of their pension and welfare plans, petitioners were seeking to impose upon their employer both obligations to fund these plans going beyond those provided in the carefully balanced Congressional program of ERISA and an unprecedented expansion of the administrative duties related to these plans.

Accordingly, the courts below had no difficulty finding that petitioners' claims "relate to" ERISA employee benefit claims and that for that reason they are pre-empted. As the courts below found, the impact of petitioners' claims on ERISA plans would not be merely "tenuous, remote, or peripheral," since petitioners were "seeking to use state law causes of action to require a company to fund its employee benefit plan in a manner not required by ERISA." *Albert* v. *Avery* (S.D.N.Y.), 724 F. Supp. at 253-54 (PA 13-14); *accord Albert* v. *Avery* (2d Cir.), slip op. at 4-5 (RA 4).

Nor did the courts below have any difficulty finding that petitioners' claims were within the scope of § 502(a), and therefore were subsumed by ERISA. As the district court found,

> "The practical economic consequence of the relief sought by [petitioners] in this action is to require the employer, by virtue of the adoption of the ERISA plan, to create a reserve fund. Thus, [petitioners] are seeking to use state law causes of action to require a company to fund its employee benefit plan in a manner not required by ERISA. ERISA itself clearly has its own regulations

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24 *See Moore* v. *Metropolitan Life Insurance Co.*, 856 F.2d 488 (2d Cir. 1988). The district court found that the welfare plans at issue in this case were terminable at any time. *See* 724 F. Supp. at 249 (PA 31-32).

25 *Cf.* ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3).

> for the administration and funding of covered plans, (29 U.S.C. § 1082), and has provided its own scheme for enforcement of those requirements." *Albert* v. *Avery* (S.D.N.Y.), 724 F. Supp. at 253-54 (PA 13-14).

As the Second Circuit found, petitioners' goal was to protect ERISA benefits. "[I]t is clear to us that the backbone of the claim is an injunction geared to secure funding of pension benefits owed to the class under Uniroyal Chemical's employee benefit plan." *Albert* v. *Avery* (2d Cir.), slip op. at 5 (RA 4). Therefore petitioners' complaint arose under ERISA and, accordingly, was properly removed.

For these reasons, the courts below properly summarily rejected petitioners' argument, repeated in the Petition, that "the Complaint has nothing to do with what benefits are owed by an ERISA-governed plan, . . . what the level of contributions to a plan should be, whether fiduciaries of a plan have discharged their duties faithfully, or similar issues which ERISA regulates, and which would indeed be pre-empted under *Taylor* and *Dedeaux*." (Petition at 21-22.) In holding petitioners' claims removable, the courts below correctly applied this Court's holdings in *Metropolitan Life* v. *Taylor* and *Pilot Life* v. *Dedeaux*.

The Petition argues that this case is governed not by those decisions, but by this Court's subsequent decision in *Mackey* v. *Lanier Collections Agency & Service, Inc.*, 486 U.S. 825 (1988), and that the Second Circuit's decision here is in direct conflict with *Mackey*. Petitioners are wrong. The Court held in *Mackey* that although a Georgia garnishment statutory provision was pre-empted by § 514(a) of ERISA because it expressly exempted ERISA plan funds from garnishment, 486 U.S. at 829-30, the general Georgia statutory scheme was not pre-empted and therefore could be applied to garnish ERISA welfare plan funds. *Id.* at 838.[26] In *Mackey* the Court once again reaffirmed that the pre-emptive force of § 514(a) is not

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26 Petitioners mischaracterize the law by broadly asserting that "Mackey held that state procedural remedies for the enforcement of creditors' rights are not pre-empted by ERISA." (Petition at 19-20).

limited to state laws that single out or specifically mention ERISA plans, but, rather, extends to all state laws that relate to such plans. *Id.* at 829-30 (citing *Pilot Life* v. *Dedeaux*). Nor does "[t]he possibility that [a state law] was enacted . . . to help effectuate ERISA's underlying purposes . . . save the state law from pre-emption." *Id.* at 829. Thus, the provision of the Georgia garnishment law that expressly exempted ERISA funds was pre-empted. The Georgia statute was not held pre-empted generally, however, and therefore could be used to garnish welfare benefits, because Congress expressly provided that a plan may "sue or be sued", ERISA § 502(d)(1),[27] but did not provide a mechanism for enforcement of judgments obtained against plans.[28]

While the decision of the Second Circuit in this case is in no way inconsistent with *Mackey*—in fact *Mackey* is consistent with and complements *Metropolitan Life* v. *Taylor*, *Pilot Life* v. *Dedeaux* and the other decisions of this Court applied by the Second Circuit in this case—certain features of *Mackey* which distinguish it from this case are readily apparent. First, unlike petitioners' attempted use of state fraudulent conveyance law here, the state garnishment statute at issue in *Mackey* was not and could not have been used to determine or impact in any way the rights and obligations as between employees and their employers under employee benefit plans. The Georgia garnishment statute does not impact on how such plans should work or how and when they should be funded. Here, by contrast, granting the state law remedies petitioners sought to invoke would have resulted in

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27 29 U.S.C. § 1132(d)(1) (1982).

28 The Court reasoned that "money judgments against ERISA welfare benefit plans, based on state or federal law, won in state or federal court, must be collectible in some way; garnishment is one permissible method." 486 U.S. at 834. The Court also reasoned that while in ERISA § 206(d)(1), 29 U.S.C. § 1056(d)(1) (1982), Congress expressly and specifically prohibited garnishment of pension benefits—the garnishment of which was not at issue in *Mackey*—its silence as to garnishment of welfare benefits in the face of its express prohibition of garnishment of pension benefits means it intended not to bar it. 486 U.S. at 836-37.

an adjudication that their employer was obligated to make specific contributions to ERISA plans at specified times, well beyond its statutory obligations under ERISA and the plans. Second, the plaintiff in *Mackey* was a collection agency—not a plan participant or beneficiary—and therefore was not limited by the exhaustive list of civil enforcement remedies included in § 502(a). Therefore, unlike the plaintiff in *Metropolitan Life* v. *Taylor* and unlike petitioners here, the plaintiff in *Mackey* had no cause of action under ERISA to displace its state claims.

This Court has already decided the issue presented in this case. *Metropolitan Life* v. *Taylor* governs this case and was correctly applied below. No further review is necessary.

C. The Decision Of The Second Circuit Is Not In Conflict With Decisions Of Other Federal Courts Of Appeals Or Of State Courts Of Last Resort

The conflicts posited by the Petition between the decision of the Second Circuit in this case and decisions of other circuits and of state courts of last resort do not exist.

Petitioners cite eight decisions of state courts of last resort and other federal courts of appeals which, they incorrectly assert, are in conflict with the decision of the Second Circuit below.[29] None of the cases petitioners posit as being in conflict with the decision of the Second Circuit below concerned, as this case does, pre-emption or removability of a state court suit by ERISA benefit plan participants attempting to use state law to secure and compel funding of benefits alleged to be owed to them under those plans.

Each of petitioners' eight supposedly conflicting lower court cases falls into one of three categories of inapposite cases:

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29 Seven of those cases are cited in the Petition. The eighth, *Bricker* v. *Maytag Co.*, 450 N.W.2d 839 (Iowa 1990), is the subject of a letter from petitioners' counsel to the Hon. Joseph F. Spaniol, Jr., Clerk of the Court, dated March 1, 1990.

- Four of those cases were suits by employees, which did not seek to determine and would not impact upon the rights of ERISA participants or their employers' obligations under ERISA or ERISA benefit plans;

- One was a suit by a plaintiff who was not an ERISA plan participant or beneficiary, and who therefore had no civil enforcement powers under ERISA § 502(a), and which, in any event, did not seek to determine and would not impact upon the rights of participants or the obligations of employers under ERISA or ERISA benefit plans; and

- Petitioners' remaining three lower court cases did not involve ERISA or ERISA pre-emption at all, but rather, involved pre-emption issues under federal statutes other than ERISA.

1. Employee Suits That Did Not Involve Determination of Participant Rights or Employer Obligations

Sasso v. *Vachris*, 66 N.Y.2d 28, 484 N.E.2d 1359, 494 N.Y.S.2d 856 (1985), held that a New York statute that provides an enforcement mechanism for employees to recover past due or delinquent contributions to pension funds and welfare benefits directly from the corporation's ten largest shareholders, was not pre-empted by ERISA because it does not impact on the terms and conditions of employee benefit plans.[30] *Bricker* v. *Maytag Co.*, 450 N.W.2d 839 (Iowa 1990), held that retired employees' state law claims that the employer misrepresented to them the conditions under which they would be entitled to an increase in retirement benefits were not pre-empted by ERISA, because the relationship

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30 With respect to cases such as this, the district court held below:

> "While ERISA preemption may not extend to state law causes of action to collect an existing debt created by an ERISA obligation, plaintiffs' claims here for payments above ERISA's minimum funding requirements do 'relate to' an ERISA plan and are therefore preempted." *Albert* v. *Avery* (S.D.N.Y.), 724 F. Supp. at 247 (PA 24-25).

between the claims for relief and the retirement plans was incidental and not essential to plan administration as "[n]o pension funds are implicated," and the state law created no prospect that the employer would face difficulty administering its benefit plans. *Id.* at 841, 842. *Perry* v. *P*I*E Nationwide, Inc.*, 872 F.2d 157, 162 (6th Cir. 1989), *cert. denied*, 110 S. Ct. 1166 (1990), was a diversity action holding that fraudulent inducement claims were not pre-empted; the claim in that case would not impact on the amount or funding of benefits under ERISA plans, and the plaintiffs there "do not seek plan benefits or an increase in plan benefits; rather, they seek not to be bound as participants. . . ." *Ethridge* v. *Harbor House Restaurant*, 861 F.2d 1389 (9th Cir. 1988), held that ERISA did not pre-empt a state common law cause of action for tortious discharge simply because an element of damages sought was recovery of lost "salary and benefits," since such a claim was so incidental to ERISA that it did not relate to a plan or its administration.

By contrast to those cases, petitioners here seek to use state law to compel the employer to make contributions to their pension and welfare benefit plans that are not yet due and owing, to enlarge the employer's obligations to make contributions beyond those required by ERISA or the plans, and to create, out of state law, an additional level of administrative obligations under the plans for the employer.

2. Suits by Persons Who Have No Civil Enforcement Rights Under § 502(a)

Planned Consumer Marketing, Inc. v. *Coats & Clark, Inc.*, 71 N.Y.2d 442, 522 N.E.2d 30, 527 N.Y.S.2d 185 (1988), held that certain state law causes of action brought by a plan sponsor's judgment creditor—who was not a plan participant or beneficiary—to set aside as fraudulent conveyances transfers of assets into a plan for the purpose of concealing those assets from the judgment creditor, were not pre-empted by ERISA because they did not relate, directly or indirectly, to the terms or conditions of the plan and because the rights

sought to be vindicated did not arise under ERISA.[31] Here, by contrast, petitioners are plan participants who, unlike the plaintiff in *Coats & Clark*, are limited to the civil enforcement remedies provided by ERISA § 502, and who seek to use state law to protect and enforce rights under, obtain prefunding of, and change the terms of the plans.

3. Suits Arising Under Statutes Other than ERISA

International Ass'n of Machinists, IAM Local 437 v. *United States Can Co.*, 150 Wis. 2d 479, 441 N.W.2d 710 (1989), *cert. denied*, 110 S. Ct. 718 (Jan. 8, 1990), *reh. denied*, 110 S. Ct. 1311 (Feb. 26, 1990)[32] concerned preemption under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (1982) ("LMRA"), not ERISA. That case held that a state fraudulent conveyence cause of action by employees seeking to enjoin a leveraged buyout of their employer was not pre-empted by LMRA § 301 because it was not substantially dependent on an analysis of the terms of the applicable collective bargaining agreement. Here, by contrast, petitioners seek not only clarification and enforcement of their rights under ERISA benefit plans, but expansion of the employer's obligations under the plans.[33] In *Air Line Pilots*

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31 Certain other state fraud causes of action were held pre-empted in *Coats & Clark* because they did require resort to the terms of the plan. *See* 71 N.Y.2d at 447 n.3, 522 N.E.2d at 33 n.3, 527 N.Y.S.2d at 188 n.3.

32 The citation to *International Ass'n of Machinists* v. *United States Can Co.* in the Petition erroneously indicates that a petition for certiorari in that case was pending as of the time the Petition in this case was filed. The Petition here was filed February 6, 1990; certiorari had been denied there on January 8, 1990.

33 The Wisconsin court found that application of fraudulent conveyance law to enjoin the leveraged buyout at issue in that case would not impinge on or interfere with LMRA's goal of uniformity in construction of collective bargaining agreements. 150 Wis. 2d at 499, 441 N.W.2d at 718. Here, by contrast, allowing petitioners to use state fraudulent conveyance law to enjoin a leveraged buyout would upset the scheme Congress carefully designed in ERISA of protecting employees while at the same time not discouraging employers from instituting ERISA-governed benefit plans.

Ass'n v. *UAL Corp.*, 874 F.2d 439 (7th Cir. 1989), *on subsequent appeal*, Nos. 89-2617 and 89-2627 (7th Cir. March 14, 1990), and *Railway Labor Executives Ass'n* v. *Pittsburgh & Lake Erie R.R.*, 858 F.2d 936 (3d Cir. 1988), the federal statutes in question were the Railway Labor Act and the Interstate Commerce Act, which unlike ERISA have no civil enforcement provisions in favor of persons in the position of the plaintiffs and therefore the doctrine of complete preemption did not and could not apply to cases arising under them.[34] *Cf. Metropolitan Life* v. *Taylor.*

Thus, the conflict petitioners posit between the decision of the Second Circuit in this case and the decisions of other federal courts of appeals and of state courts of last resort does not exist.[35]

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34 Not only do these cases not conflict with the Second Circuit's decision here, the Third Circuit in *Railway Labor Executives Ass'n* v. *Pittsburgh & Lake Erie R.R.* expressly *contrasted* the Railway Labor Act's lack of complete pre-emptive effect with that of ERISA. The Third Circuit in that case expressly stated that under this Court's decision in *Metropolitan Life* v. *Taylor* a state law cause of action that can be recharacterized as a claim under § 502(a) of ERISA (because such a claim would protect the same right as the state cause of action) would be completely pre-empted and therefore removable. 858 F.2d at 941-42. As noted above, that is exactly what the district court did here—it recharacterized petitioners' claims as claims under § 502(a), then found them to be meritless—a finding from which petitioners did not appeal.

35 After filing their Petition petitioners wrote a letter to the Clerk of the Court advising that the Court recently granted certiorari in a case called *FMC Corp.* v. *Holliday*, No. 89-1048, and suggesting that the Court hear this case together with that one. That case does not, as petitioners' letter to the Clerk states, concern the issue involved in this case. The issue in *FMC Corp.* v. *Holliday* is whether a state law prohibiting assignment or subrogation of automobile liability claims or recoveries is within or outside of the scope of the "deemer" clause of ERISA § 514(b)(2)(B), 29 U.S.C. § 1144(b)(2)(B), which protects ERISA plans from being deemed insurers by state law and thus exempt under § 514's "savings" clause, ERISA § 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A), from pre-emption. Neither the deemer clause

CONCLUSION

The petition for a Writ of Certiorari should be denied.

Dated: New York, New York
March 28, 1990

Respectfully submitted,

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nor the savings clause is implicated in this case, and *FMC* does not concern the scope of the ERISA pre-emption clause itself. ("Neither party [in *FMC*], nor any court that has dealt with the matter, disputes that the 'relates to' language of the pre-emption clause should be read broadly in general, and broadly enough in particular to cover [the type of law in question in *FMC*]." *FMC Corp.* v. *Holliday*, 885 F.2d 79, 84 (3d Cir. 1989), *cert. granted*, 110 S. Ct. 1109 (1990).) Nor does *FMC* concern the displacing effect of § 502(a) or removal jurisdiction under the complete pre-emption doctrine, the issues in this case.

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

89-7970

At a stated term of the United States Court of Appeals for the Second Circuit held at the United States Courthouse in the City of New York, on the 14th day of November, one thousand nine hundred and eighty-nine.

Present:

Hon. James L. Oakes, *Chief Judge.*
Hon. Amalya L. Kearse, Hon. Frank X. Altimari,
Circuit Judges.

Robert A. Albert, Richard W. Palizay, and Samuel H. Schaffer, on behalf of themselves and all others similarly situated,

Appellants,

v.

Avery, Inc., a Delaware Corporation, Nelson Peltz and Peter May, as Officers and Directors, Uniroyal Chemical Holding Co., a Delaware Corporation, Uniroyal Chemical Acquisition Co., a New Jersey Corporation, Uniroyal Chemical Co., Inc., a New Jersey Corporation, UCC Investors Holding, Inc., a Delaware Corporation, Robert J. Mazaika, as Officer and Director, Drexel Burnham Lambert Incorporated,

Appellees.

ORDER

The plaintiffs, a class of both active and retired employees of the Uniroyal Chemical Company, Inc. ("Uniroyal Chemical"), appeal from a ruling of the Southern District of New York, Leonard B. Sand, Judge, holding their claim for injunctive relief properly removed under 28 U.S.C. § 1441(a) (1982) and refusing to remand it to the state court in which it originally was brought. We affirm.

In its initial complaint, filed on September 8, 1989, in New York Supreme Court, the plaintiff class sought to enjoin an impending acquisition of Uniroyal Chemical Holding Co. ("Holding Company"), which owns Uniroyal Chemical through an intermediate subsidiary, Uniroyal Chemical Acquisition Co. Avery, Inc., ("Avery") is the sold owner of the Holding Company and is in the midst of closing a deal under which UCC Investors Holding, Inc. ("UCC Investors"), formed by a group of Uniroyal Chemical management executives, is to purchase the Holding Company from Avery, and thereby assume control of Uniroyal Chemical, for a price of $800 million.

The plaintiff class asserted in its complaint that the impending acquisition will drastically increase Uniroyal Chemical's debt burden and consequently will threaten Uniroyal Chemical's ability to meet the present and future pension, life insurance, and health insurance obligations owed to the plaintiff class. As grounds for relief, the class advanced five state common law and statutory doctrines: fraudulent conveyance, corporate fraudulent transfer, breach of fiduciary duty, corporate waste, and unjust enrichment.

The defendants, which include Avery, Uniroyal Chemical, the Holding Company, and UCC Investors, removed to federal court. On September 18, 1989, Judge Sand denied the plaintiff class' motion to remand, finding the action properly removable under *Metropolitan Life Ins. Co.* v. *Taylor*, 481 U.S. 58 (1987), which allows removal of an action raising state law claims when the state law claims are pre-empted by § 514(a) of the Employment Retirement Income Security Act (ERISA), 29 U.S.C. § 1144(a) (1982), and fall within the

scope of the civil enforcement provisions of ERISA § 502(a), 29 U.S.C. § 1132(a) (1982). On October 10, 1989, pursuant to plaintiff class' motion for reconsideration, Judge Sand reaffirmed his prior ruling on the removal issue. Additionally, he dismissed under Fed. R. Civ. P. 12(b)(6) the plaintiff class' claims insofar as they sought relief for alleged insufficient funding of Uniroyal Chemical's life insurance and health insurance obligations. Finally, Judge Sand refused to grant a preliminary injunction to halt the acquisition until the defendants set aside funds necessary to insure pension obligations owed to the class.

On October 17, 1989, a panel of this Court expedited the case for appeal. Argument was heard on October 25, 1989. At oral argument, counsel for the plaintiff class stated that grounds for appeal were limited solely to the question of whether Judge Sand properly held this action removable. Accordingly, we limit our discussion below to this one question.

DISCUSSION

In *Metropolitan Life Ins. Co.* v. *Taylor*, 481 U.S. 58 (1987), the Supreme Court held that when a plaintiff's state law action is pre-empted by § 514(a) of ERISA and states a claim falling within the scope of the civil enforcement actions under § 502(a) of ERISA, the case is considered to arise under ERISA and thus is properly removable to a federal court. Accordingly, the question of whether this case is removable turns upon whether the plaintiff class' state law claims are pre-empted by ERISA and whether they fall within the scope of ERISA's civil enforcement provisions.

ERISA § 514(a) pre-empts "state laws insofar as they . . . relate to any employee benefit plan [under ERISA]." 29 U.S.C. § 1144(a). The Supreme Court has held that ERISA pre-emption "is not limited solely to 'state laws specifically designed to affect employee benefit plans.' " *See Pilot Life Ins. Co.* v. *Dedeaux*, 481 U.S. 41, 47-48 (1987) (*quoting Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 98 (1983)). Thus,

ERISA will also pre-empt both state statutes of general application which "bear[ ] indirectly but substantially" upon ERISA benefit plans, *see Metropolitan Life Ins. Co.* v. *Massachusetts*, 471 U.S. 724, 739 (1985), as well as generally applicable state common law actions with the same type of effect upon ERISA benefit plans. *See Pilot Life*, 481 U.S. at 48.

We find that the state claims advanced here by the plaintiff class would impact substantially upon ERISA obligations and thus fall within ERISA's pre-emption clause. The plaintiff class seeks to impose various state law duties upon corporate officials and those attempting to acquire corporations when their activities might affect pension benefits owed to ERISA beneficiaries. Unquestionably, the effect that such duties would have upon the way in which corporations manage their ERISA obligations would be substantial. Accordingly, we find no difficulty in holding that the plaintiff class' state law claims "relate to" and ERISA employee benefit plan and thereby are pre-empted by ERISA.

The second prong of the *Metropolitan Life* v. *Taylor* test mandates that the plaintiff's claim fall within the scope of ERISA's civil enforcement provisions. Here, too, we find that the action brought by the plaintiff class falls within ERISA's enforcement provisions. ERISA allows plan beneficiaries to seek injunctive relief to enforce their rights under ERISA, *see* 29 U.S.C. § 1132(a)(3) (1982), and ERISA grants plan beneficiaries the right to have employee benefit plans abide by certain minimum funding requirements. *See* 29 U.S.C. 1081-82 (1982 & Supp. V 1987). As a matter of common sense, it is clear to us that the backbone of the class claim is an injunction geared to secure funding of pension benefits owed the class under Uniroyal Chemical's employee benefit plan. Although class counsel urges that what the claim really seeks is to enjoin a fraudulent conveyance, as opposed to enforce any rights due under ERISA, we find the semantic distinction unpersuasive. The goal of the plaintiff class' claim is protection of ERISA rights; the way in which it characterizes the means for protecting these rights is irrelevant to the question of whether the rights fall within ERISA.

Accordingly, we find the plaintiff class' state law claim subsumed by ERISA.

In sum, because the state law claims advanced by the plaintiff class both are pre-empted by ERISA and fall within the scope of ERISA's civil enforcement provisions, we rule that Judge Sand properly found the action removable under *Metropolitan Life* v. *Taylor*.

Finally, to avoid confusion, we stress that our ruling above that the plaintiff class' claim for relief is pre-empted by ERISA does not mean that ERISA necessarily forecloses relief the plaintiff class might seek. Instead, we hold only that to the extent that the plaintiff class may have a claim for relief in this action, such relief would come under ERISA and not under the five state law grounds advanced by the plaintiff class in its initial complaint. We express no opinion as to the ultimate issue of whether ERISA would furnish the plaintiff class its sought after relief.

Judgment affirmed.

/s/ JAMES L. OAKES,
James L. Oakes,
Chief Judge.

/s/ AMALYA L. KEARSE,
Amalya L. Kearse,

/s/ FRANK X. ALTIMARI,
Frank X. Altimari,
Circuit Judges.

N.B. This summary order will not be published in the Federal Reporter and should not be cited or otherwise relied upon in unrelated cases before this or any other court.